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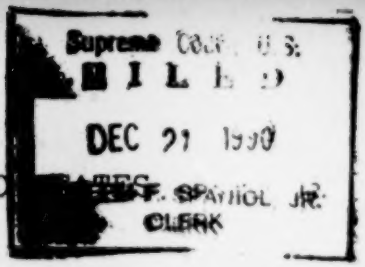

NO. 90-651

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

MICHAEL E. PLUNKETT , PETITIONER

AND

LANE + KNORR + PLUNKETT, ARCHITECTS AND PLANNERS; LANE + KNORR + PLUNKETT, INVESTMENT COMPANY, A/K/A/ LKP INVESTMENT COMPANY,

PLAINTIFFS

v.

FEDERAL DEPOSIT INSURANCE CORPORATION, RECEIVER OF FIRST INTERSTATE BANK OF ALASKA; FIRST INTERSTATE BANCORPORATION; FIRST INTERSTATE BANK OF OREGON,

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDIX TO MOTION TO VACATE ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Michael E. Plunkett, Pro Se
331 8th St
Manhattan Beach, Cal. 90266
(213) 379-9848

DECEMBER 19, 1990.

EDITOR'S NOTE:

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DECEMBER 19, 1990.

Appendix

CONTENTS

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BEFORE THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Michael E. Plunkett; Lane+Knorr+Plunkett, Architects and Planners Lane+Knorr+Plunkett Investment Company, also known as LKP Investment Company; Michael Plunkett, Inc.; and all others similary situated, Plaintiffs. v. First Interstate Bank of Alaska, formerly, Alaska Bank of Commerce, First Interstate Bancorporation; First Interstate Bank of Oregon, formerly First National Bank of Oregon; Alaska Title Guaranty Agency, Inc.; and unknown Defendants, Does 1 Through 35, Defendants.	Complaint No. A84-387 Civil 3 exhibits Jury Trial demanded

Come now Plaintiffs, Michael E.

Plunkett, pro se, and Lane + Knorr Plunkett, Architects and Planners, Lane + Knorr + Plunkett Investment Company, also known as LKP Investment Company; and Michael Plunkett, Inc.; by and through counsel, George E. Weiss, and complain of Defendants alleging as follows:

GENERAL ALLEGATIONS

1. JURISDICTIONAL STATEMENT. That jurisdiction is conferred herein by virtue of the following provisions of law: 15 U.S.C 1 et seq., especially, without limitation, 15 U.S.C. 1, 2, 13, 15, and 18; federal and state laws regulating the practice of banking institutions; 28 U.S.C 1331; 28 U.S.C. 2201-2202 Federal Civil Rule 65; Federal Civil Rule 23 (if invoked); A.S. 11.76.110; A.S.45.45.010 et seq.; A.S.45.50.471 et seq.; A.S. 45.50.562 et seq., Chapters 1, 5 and 10 of Title 6 of Alaska Statutes; A.S. 09.60.010 and Alaska Civil Rule 82 and by

virtue of the doctrines of pendant and ancillary jurisdiction - see e.g. **United Mine Workers v. Gibbs** (1966) 383 U.S. 715, 725, 16 L.Ed.2d 218, 228, 86 S.Ct 1130, 1138; and that jurisdiction exists under other provisions of federal and state law.

2. That if it is determined in the course of discovery that Plaintiffs have a claim for relief for which jurisdiction is provided under 18 U.S.C. 1961-1968, Plaintiffs pray leave to amend their complaint to add such a claim.

3. That justice requires federal Court recognition of the pendant and ancillary claims under state law to the extent that such claims might be compulsory claims which could be precluded by the doctrines of merger and bar, res judicata or collateral estoppel upon any judgment which is entered in this action.

4. (a) That Plaintiff, Michael

Plunkett, is an Alaskan resident, and is an individual who has suffered direct and indirect harm as a result of the Defendants' conduct described herein; (b) that Plaintiff, Lane+Knorr+Plunkett, Architects and Planners is a partnership comprised of Michael E. Plunkett and Donald R. Knorr; (c) that Plaintiff, Lane+Knorr+Plunkett Investment, is a partnership comprised of Michael E. Plunkett and Donald R. Knorr; (d) that Plaintiff, LKP Investment Co. is a dba under which Plaintiff, Lane+Knorr+Plunkett Investment Company is and has been operating; (e) that Plaintiff, Michael Plunkett, Inc., is an Alaskan corporation and a separate and distinct entity; (g) that to the extent that there are any conditions precedent to the filing of this suit, such as compliance (if required) with A.S. 10.05.720, or any other lawful requirement which may be necessary (if

any) for the bringing of this lawsuit, said conditions precedent have been met and (h) that Plaintiffs are fully competent to bring this action in any case.

5. That Defendants, First Interstate Bank of Alaska, formerly, Alaska Bank of Commerce; First Interstate Bank Corporation; First Interstate Bank of Oregon, formerly, First National Bank of Oregon; all said banks or banking corporations are hereinafter referred to as Defendants, "banks" or "the banks." The banks ar domestic and foreign bank corporations which engage in interstate commerce, and which are doing business in Alaska and/or doing business outside Alaska which is affecting business which had occurred, and is occuring, in Alaska.

6. That Defendant, Alaska Title Guaranty Agency, Inc., is an Alaskan

corporation which has placed the below-described real property on the market for a trustee's sale under a deed of trust foreclosure on behalf of the beneficiary, Defendant, First Interstate Bank of Alaska.

7. That the persons, Donald Knorr, Anne Knorr, and Carmin Plunkett, may claim to have have interests or claims separate than that which are presently represented and asserted by the present Plaintiffs. If said Donald Knorr, Anne Knorr, and Carmin Plunkett are determined to be necessary and indispensible parties to this action, Plaintiffs pray leave to add such parties and/or any other parties determined necessary or desirable for a fair and just resolution of the dispute.

8. That Defendants, Does 1 through 35, are presently unknown and their relationship to the present action is unknown, although it is believed that the

Defendants, Does, are persons and entities responsible and liable to Plaintiffs upon the claims for relief or related claims as against the named Defendants. Plaintiffs pray leave to amend to add said Defendants, Does, when their identity becomes known, and if it becomes desireable or necessary to add such parties.

9. That during the years 1980 and 1981, the named Plaintiffs entered into an agreement with Defendant, First Interstate Bank of Alaska, then known as Alaska Bank of Commerce, for purposes of obtaining financing of the construction of the building now located at 600 Barrow Street in Anchorage, Alaska. The loan in principal amount of $1,667,000.00 had an interest rate determined at three and one half percent above the prime rate, which had been defined as the prime rate charged

by the First National Bank of Oregon, Portland, Oregon, to its most credit worthy borrowers.

10. That in May of 1984, the United States District Court For the District of Oregon, in three companion cases, **Wilcox Development Co. et al v. First Interstate Bank of Oregon et al,** Civil Case No. 81-1127-RE; **A. C. Distribution Co., Inc. et al v. Pacific Western Bank et al,** Civil Case No. 81-1128 RE; and **Kunkle v. First Interstate Bank of Oregon et al,** Civil Case No. 82-754 RE, found that Defendants, First Interstate Bank Corporation and First Interstate Bank of Oregon, formerly First National Bank of Oregon had been guilty of violating the federal antitrust and trade practices statutes as herein alleged as against Defendants, banks, in the anti-competitive and unlawful discounting (below the published "prime" rate) on over 2500 loans.

11. That Defendants, banks, are estopped and barred from asserting the legality of their practices as alleged in the present case (a) by virtue of collateral estoppel upon the judgments in the cited Oregon cases; (b) because of the tying relationships between the Alaska banks and the First Interstate Bank Corporation, and First Interstate Bank of Oregon, formerly, First National Bank of Oregon; (c) because of the contractual and other relationships as existed between the Alaska and the out of state banks; (d) to the extent it is determined that the Alaska and the out of state banks acted as agents and representative for one another; (e) that to the extent it is determined that the Oregon or other foreign banks acted as the 'alter ego' for the Alaska banks; (f) that to the extent that it is determined that a conspwiracy to set

interest rates in violation of federal and state antitrust and trade practices laws (and in violation of Plaintiffs rights as otherwise complained of herein) existed among the Defendants, banks, and among Defendants, banks, and others; and (g) and because it would violate fundamental concepts of fairness and justice to permit the Alaska banks to profit from illegal activity on the part of others with whom the Alaska banks had acted in concert as herein alleged.

12. That Plaintiffs suffered direct damages as a result of the interest overcharges, usury (if applicable) and other unlawful activity of the Defendants in a sum in excess of FIFTY THOUSAND DOLLARS ($50,000.00), the exact amount of which is to be determined at trial; and that Plaintiffs suffered consequential damages as elsewhere alleged and in particular in the form of impared cash

flow resulting in Plaintiffs' inability to meet their ongoing obligations.

13. That the aforesaid loan agreement between Plaintiff's, Michael E. Plunkett; Lane + Knorr + Plunkett, Architects and Planners; Lane + Knorr + Plunkett Investment Company, also known as LKP Investment Company and Defendants, First Interstate Bank of Alaska, formerly, Alaska Bank of Commerce, had been, and is secured (inter alia) by a deed or deeds of trust on the real property located in Anchorage, Alaska, in the Anchorage Recording District, Third Judicial District, State of Alaska and Better described as:

PARCEL No. 1:

RESIDENTIAL UNIT E, 600 Barrow Street, a condominium as shown on the floor plans filed in the office of the Anchorage Recorder for the Anchorage Recording District, Third Judicial District, State of Alaska, on 10 February 1982 as Plat No. 82-20, as identified in the Declaration recorded

10 February 1982, in book 697 at Page 942, in the Anchorage Recording District, Third Judicial District, State of Alaska.

TOGETHER WITH and undivided 8.574 % interest in the common areas being Lot 1, Block 110, Original Townsite of Anchorage, in the records of the Anchorage Recording District, Third Judicial District, State of Alaska.

PARCEL No. 2

UNIT No. A-5, SEACLIFF TERRACE CONDOMINIUM, as shown on the floor plans filed in the office of the Anchorage Recorder for the Anchorage Recording District, Third Judicial District, State of Alaska, on 22 June 1977 under File No. 77-107, and identified in Declaration Submitting Real Property to the Horizontal Property Regimes Act for the State of Alaska, recorded 22 June 1977, in Book 203 at Page 754, **TOGETHER WITH** the right to the exclusive use of Deck Space designated as AD-5; the Parking Space designated as AP-5; and the Storage Space designated as AS-5.

TOGETHER WITH an undivided 2.98% interest in the common areas and facilities appurtenant to Unit A-5, as set forth in said Declaration.

14. That Defendant, First Interstate Bank of Alaska, formerly, Alaska Bank of Commerce, by and through the trustee, Alaska Title Guaranty Agency, Inc., has

declared and published its intention to foreclose and sell the above-described real property on 12 September 1984 at a foreclosure sale in Anchorage, Alaska; and that Plaintiffs stand to suffer irreparable harm and loss unique and valuable interests in the real property unless the Court intervenes to provide relief, there being no adequate or complete remedy available at law. At the time of the notice of default under the notes and deeds of trust, Plaintiffs had allegedly been in arrears to the Defendant, First Interstate Bank of Alaska for a sum of about $10,000.00, far less than the unlawful overcharges assessed by Defendants as aforesaid.

15. That as a result of the illegal conduct on the part of the Defendants, Plaintiffs, Michael E. Plunketts and Lane + Knorr + Plunkett, Investment Co. and

Architects and Planners, had been forced to incur additional indebtnesses, at least one of which again had been pegged to the illegal and fraudulent prime rate; and that additional direct and consequential damages had been incurred thereby.

16. That the illegal published "prime" rate which the Defendants, banks, based rates which had been charged to the Plaintiffs, had been, and is discriminatory and anti-competitive.

17. That upon information and belief, all or some of the Defendants, banks, had unlawfully colluded and conspired at various times to deprive Plaintiffs of additional loans, which would have relieved the distress in which Defendants had placed Plaintiffs.

18. That Plaintiffs had not been aware, and could not reasonable have become aware, of the unlawful activities of the Defendants until the decision of the

Oregon Court had been reported in the newspaper in May or June of 1984.

19. That in or about February of 1983, Frank Kauffman, an employee of Defendant, First Interstate Bank of Alaska, made defamatory statements to at least one other person, stating that Lane + Knorr + Plunkett, Architects and Planners, was insolvent and about to close its doors; and that such statements were untrue and amounted to defamation per se; alternatively, the distress being suffered by Plaintiffs, had been as a direct and proximate result of the unlawful activities of Defendants, banks, and that said Defendants are estopped from asserting that the results of such unlawful activities are attributable to Plaintiffs.

20. That in or about January of 1984, Defendant, First Interstate Bank of

Alaska, seized funds on deposit by Plaintiffs, Michael E. Plunkett; Lane + Knorr + Plunkett, Architects and Planners; Lane + Knorr + Plunkett Investment Company; and Michael Plunkett, Inc.; ostensibly under the provisions of the aforesaid subsequent loans (see paragraph 15).

21. That nowhere had Michael Plunkett, Inc., ever been a party to the aforesaid loan agreements; and that said Defendant's First Interstate Bank of Alaska's, conduct in converting the Michael Plunkett, Inc. account funds, had been malicious and as part of the other ongoing unlawful conduct as aforesaid.

22. That as a direct and proximate result of the aforesaid acts and omissions on the part of the Defendants, and all of them, Plaintiffs, Michael E. Plunkett; Lane + Knorr + Plunkett, Architects and Planners; Lane + Knorr + Plunkett

Investment Company, also known as LKP Investment Company and Michael Plunkett, Inc.; have suffered and continue to suffer ongoing irreparable harm for which there is no complete and adequate remedy at law. In particular, Plaintiffs stand to lose valuable interests in the above-described real property; loss of reputation; disparagement of business reputation and relationships; have become involved in other foreseeable state litigation; and such other irreparable harm as shall be evidenced to the Court.

22. That as a direct and proximate result of the aforesaid acts and omissions on the part of the Defendants, said Defendants are jointly and severally liable to Plaintiffs in an amount in excess of ONE MILLION DOLLARS ($1,000,000.00) the exact amount of which is to be determined at trial. Said

damages consist, without limitations, of (a) direct damages of usurious and/or overcharged sums for interest; (b) direct and compensatory damages for breach of contract; (c) consequential damages for Plaintiffs' foreseeable inabilities to meet their ongoing obligations as a result of the unlawful and unfair conduct on ;the Defendants part; (d) treble damages under state and federal trade practices and anti-trust statutes (e) punitive and exemplary damages (f) actual legal fees, expenses and any damages incurred in other lawsuits forced upon Plaintiffs as a result of Defendants' conduct; (g) general compensatory damages for tortious conduct (h) damages for harm to individual and business reputation and disparagement (i) special damages for costs incurred by Plaintiffs to accountants, investigators, experts and other contractors and (j) such other general, special, compensatory,

statutory, consequential and other damages of any kind or type as shall be determined at trial.

23. That Defendants' conduct had been, and continues to be, so extreme, outrageous, willful and in bad faith that punitive and exemplary damages should be awarded in an amount to be determined at trial.

CLASS ALLEGATIONS

24. That if it is determined during discovery that a congnizable class of other persons and/or entities exists who had had improperly tied interest rates set pegged to a fraudulently represented or otherwise illegally determined interest rate by on or more of Defendants, banks, or have other common claims as herein alleged, the named Plaintiffs pray leave, if they so desire, to pursue the above-entitled action as a class action

under the Federal Rules of Civil Procedure, Rule 23.

25. That there exist common questions of law and fact to all of the class claims which sound under 15 U.S.C. 1 et seq. - especially, without limitation, 15 U.S.C. 1, 2, 13, 15, 18, and the related federal and state bases for relief; and that the claims or defenses of the class representatives are typical of the class and that, upon application for certification of a class action, the named parties shall be able and willing fully and adequately protect the interests of the class.

FIRST CLAIM FOR RELIEF

26. That Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 thru 25 as if the same had been set forth herein in full.

27. That Defendants' conduct is violative of, and actionable under 15

U.S.C. 1 et seq.; 15 U.S.C. 1601 et seq,; 12 U.S.C. 214 and 1842 et rel.; and regulations promulgated by the Federal Trade Commission.

SECOND CLAIM FOR RELIEF

28. That Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 thru 27 as if the same had been set forth herein in full.

29. That Defendants' conduct is violative of, and actionable under A.S. 45.45.010 et seq.; A.S. 45.50.471 et seq.; A.S. 45.50.562 et seq.; and Chapters 1, 5, and 10 of Title 6 of Alaska Statutes and the regulations promulgated thereunder.

THIRD CLAIM FOR RELIEF

30. That Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 thru 29 as if the same had been set forth herein in full.

31. That Defendants' conduct amounted

to a gross, material and egregious breach of contract; and that justice requires the Court to intervene between the parties so as to provide injuctive and declaratory relief to protect the name Plaintiffs.

32. That as a direct and proximate result of said breach of contract, the named, and class (if applicable), Plaintiffs have suffered damages as aforesaid; and justice requires Court intervention in order to make the named, and class (if applicable), Plaintiffs whole.

FOURTH CLAIM FOR RELIEF

33. That Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 thru 32 as if the same had been set forth herein in full.

34. That Defendants' conduct is violative of, and actionable as a fraudulent misrepresentation upon which Plaintiffs had reasonably relied to their

detriment.

FIFTH CLAIM FOR RELIEF

35. That Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 thru 34 as if the same had been set forth herein in full.

36. That Defendants' conduct is violative of, and actionable as a conspiracy on the part of Defendants upon which Plaintiffs had suffered damages as aforesaid.

SIXTH CLAIM FOR RELIEF

37. That Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 thru 36 as if the same had been set forth herein in full.

38. That Defendants' conduct is violative of, and actionable to the extent that any one or more of the Defendants had tortiously interfered with the contract rights of the Plaintiffs.

SEVENTH CLAIM FOR RELIEF

39. That Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 thru 38 as if the same had been set forth herein in full.

40. That Defendants' conduct is violative of, and actionable to the extent that any one or more of the Defendants had defamed any one or more of the Plaintiffs; and/or Defendants had unlawfully disparaged any one or more of the Plaintiffs' in operation and conduct of those Plaintiffs' businesses and/or otherwise subjected Plaintiffs to injurious falsehood.

EIGHTH AND OTHER CLAIMS FOR RELIEF

41. That Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 thru 40 as if the same had been set forth herein in full.

42. That in addition to the above-described claims for relief,

Defendants' conduct amounts to prima facie torts of various descriptions, including without limitation gross negligence, recklessness, conspiracy, wrongful foreclosure, usury, tortious breach of contract and others. To the extent that Plaintiffs' Complaint requires amendment to plead these claims with greater specificity, Plaintiff's pray for such relief to amend.

WHEREFORE Plaintiffs pray for judgment and for relief as follows:

I. For speedy permanent and tempory injuctive relief preventing and the foreclosure sale of the above-described real properties and

II. Alternatively, if the Court does not enjoin the foreclosure sale of said real properties, for damages (enhanced to the extent permitted by law) for Plaintiffs' losses of equity and other

damages shown in addition to all other damages requested herein; and

III. For such other speedy permanent and temporary injuctive and declaratory relief as shall be necessary and advisable to protect interests of the Plaintiffs from suffering existing, ongoing or future irreparable harm, and to fully set forth the rights of the parties; and

IV. For the individual, (and class if applicable), Plaintiffs to be awarded against Defendants, jointly and severally, as applicable, general, special, compensatory, statutory, consequential, punitive, treble, and other damages of any kind or type in an amount in excess of ONE MILLION DOLLARS ($1,000,000.00) as shall be determined at trial; and

V. For interest to be awarded both before and after judgment; and

VI. For the Court to recognize the public interest impact of any decision in

the above-entitled action; and for the Court to award Plaintiff his costs of suit and reasonable and actual attorneys' fees at the prevailing rate in the community under 42 U.S.C. 1988 or otherwise as applicable together with interest thereupon until paid alternatively for costs and reasonable attorneys' fees and interest as a substantive right under the Alaska Civil Rule 82 and A.S. 09.60.010 or otherwise under state or federal law; and

VII. For such further and other relief as the Court may deem just and equitable under the circumstances.

RESPECTFULLY SUBMITTED this _____ day of September 1984.

_____
Michael E. Plunkett, pro se

_____
George E. Weiss,
Attorneys for Plaintiffs Lane + Knorr + Plunkett, Architects and Planners; Lane + Knorr + Plunkett, Investment Company, also known as LKP Investment Company; and Michael Plunkett, Inc.

Michael E. Plunkett, Pro Se
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Anchorage, Alaska 99501
(907)276-4939, 277-5481

BEFORE THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Michael E. Plunkett; Lane+Knorr+ Plunkett, Architect and Planners; Lane+Knorr+Plunkett Investment Company;	REVISED SECOND AMENDED
v.	COMPLAINT
First Interstate Bank of Alaska, formerly, Alaska Bank of Commerce, First Interstate Bancorp; First Interstate Bank of Oregon, formerly First National Bank of Oregon;	No. A84-387 Civil 5 Exhibits Jury Trial Demanded Complex Case

Come now Plaintiffs, Michael E. Plunkett, pro se, on his own behalf and on behalf of his partnership interest in Lane + Knorr Plunkett, Architects and Planners, ("LKP")and Lane + Knorr + Plunkett Investment Company, also known as LKP Investment Company, Alaskan general partnerships, and complain of Defendants alleging as follows:

JURISDICTIONAL STATEMENT

1. That jurisdiction is conferred herein by virtue of the following provisions of law: 28 U.S.C. 1331 - (Federal question), 28 U.S.C. 1332 (diversity action), 15 U.S.C. 1 et seq., especially, without limitation, 15 U.S.C. 1, 2, 13, 15 and 18; federal and state laws regulating the practice of banking institutions; 12 U.S.C. 1 et seq, AS 06.01-.40 et seq., 18 U.S.C. 1961-1968, A.S. 45.45.010 et. seq. (if applicable), 28 U.S.C. 2201-2202; Federal Civil Rule 65; Federal Civil Rule 23; A.S. 11.76.110; A.S. 45.45.010 et seq. A.S. 45.50.471 et seq.; A.S. 45.50.576; A.S. 45.50.562 et seq.; Chapters 1, 5 and 10 of Title 6 of Alaska Statutes A.S. 09.60.010 and Alaska Civil Rule 82 and by virtue of the doctrines of pendant and ancillary jurisdiction 28 USCS Section 1441(c) - see

e.g. United Mine Workers v. Gibbs (1966) 383 U.S. 715, 725, 16 L.Ed. 2d 218, 228, 86 S.Ct. 1130, 1138; and that jurisdiction exists under other provisions of federal and state law.

2. That justice requires Federal Court recognition of the pendant and ancillary claims under state law to the extent that such claims might be compulsory claims which could be precluded by the doctrines of merger and bar, res judicata or collateral estoppel upon any judgment which is entered in this action.

II PARTIES

A. Plaintiffs

3. (a) That Plaintiff, Michael E. Plunkett, is an Alaska resident, and is an individual who has suffered direct and indirect harm as a result of the Defendants' conduct described herein; (b) that Plaintiff, Lane + Knorr + Plunkett, Architects and Planners, is a partnership

comprised of Michael E. Plunkett and either Donald R. Knorr or Don Knorr Associates, a California corporation; (c) That Plaintiff, Lane + Knorr + Plunkett Investment Company, is a partnership comprised of Michael E. Plunkett and Donald R. Knorr; (d) that Plaintiff, LKP Investment Co. is a d/b/a under which Plaintiff, Lane+Knorr+Plunkett Investment Company is and has been operating; (e) that to the extent that there are any conditions precedent to the filing of this suit, or any lawful requirement which may be necessary for the bringing of this lawsuit, said conditions precedent have been met and (f) that Plaintiffs are fully competent to bring this action in any case.

DEFENDANTS

4. That Defendants, First Interstate Bank of Alaska, formerly, Alaska Bank of

Commerce (hereinafter "FIBA"); First Interstate Bank Corporation (hereinafter "FIBC"); First Interstate Bank of Oregon (hereinafter "FIBO"), formerly, First National Bank of Oregon (all said banks or banking corporations are hereinafter referred to as Defendants, "banks" or "the banks") are domestic and foreign bank corporations which engage in interstate commerce, and which are doing business in Alaska and/or doing business outside Alaska which is affecting business which had occurred, and is occuring, in Alaska.

5. Defendant First Interstate Bank of Oregon, N.A. ("FIBO"), is a national banking association, with its principal place of business in the state of Oregon. Defendant First InterstateBank of Oregon was formerly known as First National Bank of Oregon and, whenever reference is made to "FIBO", such reference shall be deemed to include the corporation and its

predecessor, first National Bank of Oregon.

6. Defendant First Interstate Bancorp ("FIBC") is a California Corporation doing business in the state of Oregon and a bank holding company which owns First Interstate of Oregon and has its principal place of business in Los Angeles, California. Defendant FIBC was formerly known as Western Bancorp and whenever reference is made to defendant FIBC, such reference shall be deemed to include the corporation and its predecessor, Western BanCorp.

GENERAL ALLEGATIONS

7. That during the years 1980, and 1981, the Plaintiff LKP Investment Company entered into an agreement with Defendant, First Interstate Bank of Alaska, then known as Alaska Bank of Commerce, for purposes of obtaining

financing of the construction of the building now located at 600 Barrow Street in Anchorage, Alaska. The loan principal amount of $1,667,000.00 had an interest rate determined at three and one half percent above the prime rate, which had been defined as the prime rate charged by the First National Bank of Oregon, Portland, Oregon, to its most credit worthy borrowers. (Exhibit 2 page 1).

8. That in February 11, 1982, in order to complete construction of the 600 Barrow Building, Plaintiff LKP Investment Company executed a second Deed of Trust Note, also based on a rate of interest of 3.5 points above the fraudulent prime rate advertised by FIBO as the rate charged FIBO's most credit worthy borrowers. Said note was for the principal sum of $355,600 dollars. Plaintiff Michael E. Plunkett was a guarantor of said note as well. Plaintiffs paid all principal and interest due on

said note. Said note was paid in full in fall 1983.

9. That in May of 1984, the United States District Court For the District of Oregon, in three companion cases, Wilcox Development Co. et al v. First Interstate Bank of Oregon et al, Civil Case No. 81-1127-RE; A. C. Distribution Co., Inc. et al v. Pacific Western Bank et al, civil Case No. 81-1128 RE; and Kunkle v. First Interstate Bank of Oregon et al, Civil Case No. 82-754 RE, it was undisputed in its Judgment Notwithstanding Verdict Wilcox Development v. First Interstate Bank of Or. 605 F Supp 592-597 (D.C. OR 1985) that Defendants, First Interstate Bank Corporation and First Interstate Bank of Oregon, formerly, First National Bank of Oregon, had been engaged in the practice of discounting (below the published "prime" rate) of over 2500

loans and that FIBO utilized the "count of 4" method in determining its prime rate.

10. That Defendants, banks, are estopped and barred from asserting the legality of their discounting and prime rate setting practices as alleged in the present case (a) because of the anti-competitive tying relationships between the FIBA and the FIBO and FIBC; (b) because of the contractual and other relationships as existed between the Alaska and the out of state banks; (c) to the extent it is determined that the Alaska and the out of state banks acted as agents and representative for one another; (d) that to the extent it is determined that the Oregon or other foreign banks acted as the 'alter ego' for the Alaska banks; (e) that to the extent that it is determined that a conspiracy to set interest rates in violation of federal and state antitrust and trade practices laws

(and in violation of Plaintiffs rights as otherwise complained of herein) existed among the Defendants, banks, and among Defendants, banks, and others; and (f) and because it would violate fundamental concepts of fairness and justice to permit the Alaska banks to profit from illegal activity on the part of others with whom the Alaska banks had acted in concert as herein alleged.

11. That Plaintiffs suffered direct damages as a result of the interest overcharges,usury (if applicable),(said loans were secured by personal property in addition to real property), and other unlawful activity of the Defendants in a sum in excess of FIFTY THOUSAND DOLLARS ($50,000) (based on an average overcharge of 3% and multiples interest if in fact the rate charged FIBO most credit worthy borrowers was, on information and belief

6% verses the 21.5% "prime rate" charged plaintiffs at one point, plus over $70,000 in lost equity on foreclosed properties, the exact amount of which is to be determined at trial; and that Plaintiffs suffered consequential damages as elsewhere alleged and in particular in the form of impaired cash flow, foreclosures, loss of equity, loss of leasibility, resulting in Plaintiffs' inability to meet their ongoing obligations.

12. That the aforesaid loan agreements between Plaintiffs Michael E. Plunkett; Lane + Knorr + Plunkett, Architects and Planners, Lane + Knorr + Plunkett Investment Company, also known as LKP Investment Company and Defendants, First Interstate Bank of Alaska, formerly, Alaska Bank of Commerce, had been, secured (inter alia) by a deed or deeds of trust on the real property located in Anchorage, Alaska, in the Anchorage Recording

District, Third Judicial District, State of Alaska, and better described as:

PARCEL No. 1:

RESIDENTIAL UNIT E, 600 Barrow Street, a condominium as shown on the floor plans filed in the office of the Anchorage Recorder for the Anchorage Recording District, Third Judicial District, State of Alaska, on 10 February 1982 as Plat No. 82-20, as identified in the Declaration recorded 10 February 1982, in book 697 at Page 942, in the Anchorage Recording District, Third Judicial District, State of Alaska.

TOGETHER WITH and undivided 8.574 % interest in the common areas being Lot 1, Block 110, Original Townsite of Anchorage, in the records of the Anchorage Recording District, Third Judicial District, State of Alaska.

PARCEL No. 2

UNIT No. A-5, SEACLIFF TERRACE CONDOMINIUM, as shown on the floor plans filed in the office of the Anchorage Recorder for the Anchorage Recording District, Third Judicial District, State of Alaska, on 22 June 1977 under File No. 77-107, and identified in Declaration Submitting Real Property to the Horizontal Property Regimes Act for the State of Alaska, recorded 22 June 1977, in Book 203 at Page 754, TOGETHER WITH the right to the exclusive use of Deck Space designated as AD-5; the Parking Space designated as AP-5; and the Storage Space designated as AS-5.

TOGETHER WITH an undivided 2.98% interest in the common areas and facilities appurtenant to Unit A-5, as set forth in said Declaration.

13. That Defendant, First Interstate Bank of Alaska, formerly, Alaska Bank of Commerce, by and through the trustee,

Alaska Title Guaranty Agency, Inc., foreclosed and sold the above-described real property on 12 September 1984 at a foreclosure sale in Anchorage, Alaska; and that Plaintiffs have suffered irreparable harm and loss unique and valuable interests in the real property as a result of at least $70,000 in equity an amount to be proven at trial.

14. At the time of the notice of default under the notes and deeds of trust, Plaintiffs had allegedly been in arrears to the Defendants, First Interstate Bank of alaska for a sum of about $10,000.00, far less than the unlawful overcharges assessed by Defendants as aforesaid.

15. That in addition, the following properties are in default and in the process of judicial foreclosure as a proximate result of the excessive interest rates charged and the funds paid in

excessive interest not now available for mortgage payments or loan funds unavailable for tenant improvements, advertising and/or rent subsidies and/or draws available to partner Michael E. Plunkett to meet major committments of his personal residence:

PARCEL I:

COMMERCIAL UNIT NO. 1, 600 BARROW, a condominium as shown on the floor plans filed in the office of the Anchorage recorder for the Anchorage Recording District, Third Judicial ldistrict, State of Alaska, on February 10, 1982 in book 697 at page 942 in the records of the Anchorage Recording District, Third Judicial District, State of Alaska.

TOGETHER WITH an undivided 3.178% interest in the common areas, being Lot 1, Block 110, ORIGINAL TOWNSITE OF ANCHORAGE, records of the Anchorage Recording District, Third Judicial District, State

of Alaska.

TOGETHER WITH the exclusive right to use those certain limited common areas and facilities as set forth in said Declaration.

PARCEL II:

COMMERCIAL UNIT NO. 2, 600 BARROW, a condominium as shown on the floor plans filed in the office of the Anchorage Recorder for the Anchorage Recording District, Third Judicial District, State of Alaska, on February 10, 1982 as Plat No. 82-20 and as identified in the Declarations recorded February 10, 1982 in book 697 at page 942 in the records of the Anchorage Recording district, Third Judicial District, State of Alaska.

TOGETHER WITH an undivided 29.484% interest in the common areas, being Lot 1, Block 110, ORIGINAL TOWNSITE OF ANCHORAGE, records of the Anchorage Recording

District. Third Judicial District, State of Alaska.

TOGETHER WITH the exclusive right to use those certain limited common areas and facilities as set forth in said Declaration.

PARCEL III:

COMMERCIAL UNIT NO. 3, 600 BARROW, a condominium as shown on the floor plans filed in the office of the Anchorage Recorder for the Anchorage Recording District, Third Judicial District, State of Alaska, on February 10, 1982 as Plat No. 82-20, and as identified in the Declarations recorded February 10, 1982 in book 697 at page 942 in the records of the Anchorage Recording District, Third Judicial District, State of Alaska.

TOGETHER WITH an undivided 25.117% interest in the common areas, being Lot 1, Block 110, ORIGINAL TOWNSITE OF ANCHORAGE, records of the Anchorage Recording

District, Third Judicial District. State of Alaska.

TOGETHER WITH the exclusive right to use those certain limited common areas and facilities as set forth in said Declaration.

PARCEL IV:

Lot Three, Block One Hundred eleven, ANCHORAGE TOWNSITE, records of the Anchorage Recording District, Third Judicial District, State of Alaska,

PARCEL V:

Residential Unit No. F, 600 Barrow, A condominium as shown on the floor plans filed in the office of the Anchorage recorder for the Anchorage Recording District, third Judicial District, State of Alaska on February 10, 1982 in Book 697 at Page 942 i nthe records of the Anchorage Recording District. Third Judicial District, State of Alaska.

Together with an undivided 8.175% interest in the common areas being lot 1, Blk. 110 Original Townsite of Anchorage, records of the Anchorage Recording District, Third Judicial District, State of Alaska.

Together with the exclusive right to use those certain limited common areas and facilities as set forth in said declaration.

16. That in addition, the following property was foreclosed by FIBA and a Deed of Trust holder in Homer as a consequence of interest overcharge which made unavailable funds to support vacancy on former residence and installment payments on real property purchase in Homer:

PARCEL VI:

Unit No. 12 of POTLATCH CIRCLE TOWNHOUSE, CONDOMINIUMS, identified in that certain Declaration submitting Real Property to the Horizontal Property

Regime, recorded August 20, 1979, in the Anchorage Recording District in official records, Book 428 at Page 925, and amendments thereto recorded January 28, 1980 in Book 468 at Page 837; June 2, 1980 in Book 499 at Page 427; July 29, 1980 in Book 511 at Page 680; August 25, 1980 in Book 519 at page 273 and September 3, 1980 in Book 521 at Page 904 and Sesptember 30, 1980 in book 530 at Page 325 and as shown and described on those certain Survey Maps and Floor Plans filed under Plat No. 79-132, Anchorage Recording District, Third Judicial District, State of Alaska.

TOGETHER WITH an undivided 2.3872 percent interest in the Common Areas and Facilities for POTLATCH CIRCLE TOWNHOUSES, CONDOMINIUMS being TRACTS A, B, C, D and G POTLATCH CIRCLE SUBDIVISION, according to the official plat thereof, filed under Plat No. 79-89 and TRACTS A, B, C, D and G

POTLATCH CIRCLE SUBDIVISION, according to the official plat thereof, filed under Plat No. 79-89 and TRACTS E-1 AND F-1, POTLATCH CIRCLE SUBDIVISION, according to the official plat thereof, filed under Plat No. 80-81 in the records of the Anchorage Recording District, Third Judicial District, State of Alaska and as shown and described on such Survey Map(s) and Floor Plan(s) and Declaration and Amendments thereto and together with, all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, including the Limited Common Areas and Facilities appurtenant and reserved for the use of such Unit to the exclusion of other Units of POTLATCH CIRCLE TOWNHOUSES CONDOMINIUMS, as described on such Survey Map(s), Floor Plan(s), Declaration and Amendments thereto.

PARCEL VII:

Tract A, ISLAND VIEW SUBDIVISION, according to Plat 77-65, in the Homer Recording District, Third Judicial District, State of Alaska. NOW DESCRIBED AS; Tract B, ISLAND VIEW SUBDIVISION UNIT 2, according to Plat No. 83-106, in the Homer Recording District, Third Judicial District, State of Alaska.

17. That as a result of the illegal and/or tortious conduct and contract breaches on the part of the Defendants, Plaintiffs, Michael E. Plunkett and Lane + Knorr + Plunkett, Investment Co. and Lane + Knorr + Plunkett, Architects and Planners, had been forced to incur additional indebtednesses, at least one said loan executed in early 1982 by LKP Investment Company for additional construction funds for the 600 Barrow Street Project had been pegged to the illegal and fraudulent prime rate; and

that additional direct and consequential damages had been incurred thereby.

18. That the illegal published "prime" rate which the Defendants, banks, based rates which had been charged to the Plaintiffs, had been, and is discriminatory and anti-competitive.

19. That upon information and belief, all or some of the Defendants, banks, had unlawfully colluded and conspired at various times with unnamed co conspirators of other Alaska Banks, to deprive Plaintiffs of additional loans, which would have relieved the distress in which Defendants had placed Plaintiffs.

20. That plaintiffs applied for additional financing at virtually every commercial bank in Anchorage in 1984 in an attempt to relieve said financial distress, with virtually identical denial from each said unnamed coconspirator banks and/or bank officials.

21. That Plaintiffs had not been aware, and could not reasonably have become aware, of the unlawful activities of the Defendants until the decision of the Jury in the Oregon Court had been reported in the newspaper in May 1984.

22. That in or about February of 1984, Frank Kauffman, an employee of Defendant, First Interstate Bank of Alaska, made defamatory statements to at least one other person, stating that Lane + Knorr + Plunkett, Architects and Planners, was insolvent and about to close its doors; and that such statements were untrue and amounted to defamation per se; alternatively, the distress being suffered by Plaintiffs, had been as a direct and proximate result of the unlawful activities of Defendants, banks, and that said Defendants are estopped from asserting that the results of such

unlawful activities are attributable to Plaintiffs.

23. That in or about January of 1984, Defendant, First Interstate Bank of Alaska, seized funds on deposit by Plaintiffs, Michael E. Plunkett; Lane + Knorr + Plunkett, Architects and Planners; Lane + Knorr + Plunkett Investment Company; and Michael Plunkett, Inc, a corporation at which time was wholly owned by Michael E. Plunkett; ostensibly under the provisions of the aforesaid subsequent loans .

24. That nowhere had Michael Plunkett, Inc., ever been a party to the aforesaid loan agreements; and that said Defendant's, First Interstate Bank of Alaska's, conduct in converting the Michael Plunkett, Inc. account funds, had been malicious and as part of the ongoing unlawful conduct as aforesaid.

25. That as a direct and proximate

result of the aforesaid acts and omissions on the part of the Defendants, and all of them, Plaintiffs, Michael E. Plunkett; Lane + Knorr + Plunkett, Architects and Planners; Lane + Knorr + Plunkett Investment Company, also known as LKP Investment Company; have suffered and continue to suffer ongoing irreparable harm for which there is no complete and adequate remedy at law. In particular, Plaintiffs have lost and/or stand to lose valuable interests in the above-described real property; loss of reputation; disparagement of business reputation and relationships; have become involved in other foreseeable state litigation; and such other irreparable harm as shall be evidenced to the Court.

26. That as a direct and proximate result of the aforesaid acts and omissions on the part of the Defendants,

said Defendants are jointly and severally liable to Plaintiffs in an amount in excess of ONE MILLION DOLLARS ($1,000,000.00) the exact amount of which is to be determined at trial. Said damages consist, without limitation, of (a) direct damages of usurious and/or overcharged sums for interest; (b) direct and compensatory damages for breach of contract; (c) consequential damages for Plaintiffs' foreseeable inabilities to meet their ongoing obligations as a result of the unlawful and unfair conduct on the Defendants part; (d) treble damages under state and federal trade and anti-corruption practices and anti-trust statutes; (e). punitive and exemplary damages; (f) actual legal fees, expenses and any damages incurred in other lawsuits forced upon Plaintiffs as a result of Defendants' conduct; (g) general compensatory damages for tortious conduct;

(h) damages for harm to individual and business reputation and disparagement; (i) special damages for costs incurred by Plaintiffs to accountants, investigators, experts and other contractors; and (j) such other general, special, compensatory, statutory, consequential and other damages of any kind or type as shall be determined at trial.

27. That Defendants' conduct had been, and continues to be, so extreme, outrageous, willful and in bad faith that punitive and exemplary damages should be awarded in an amount to be determined at trial.

FIRST CLAIM FOR RELIEF

28. That Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 thru 27 as if the same had been set forth herein in full.

29. That Defendants' conduct is

violative of, and actionable under 15 U.S.C. 1 et seq.;

30. Other persons not made defendants herein have participated as coconspirators with defendants in the illegal acts and transactions set forth herein.

31. For many years past, the exact date being presently unknown to plaintiffs, and continuing up to and including the date of filing of this complaint, defendants, and coconspirators have engaged in an unlawful combination and conspiracy in restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. Par. 1.

32. The aforesaid combination and conspiracy have consisted of a continuing agreement, understanding and concert of action among the defendants and unnamed coconspirators, to deny plaintiffs loans and to agree to the substantial terms of which have been to raise, fix, stabilize

and maintain the interest rate charged by lending institutions on a loan or use of money including but not limited to setting by agreement a published/or "prime" rate based on "count of four" and then contracting with FIBA who contracted with plaintiffs, knowing this "count of four" rate was not the rate charged its most credit worthy borrowers.

33. At all times material, the denial of loans by defendent FIBA and conconspirators and the interest rate held out by FIBA and/or FIBO to be its prime rate was not based upon defendants cost of funds or other legitimate business reason but was announced and imposed by defendants pursuant to the aforesaid illegal combination and conspiracy.

34. In furtherance of the aforesaid combination and conspiracy, the defendants and coconspirators did various acts.

including acts to raise, fix, stabilize and maintain the interest rate charged by lending institutions on a loan or use of money.

35. The aforesaid offense has had the following effects, among others:

a. The "prime rate" has been raised, fixed, stabilized and maintained at noncompetitive levels;

b. The interest rates charged by lending institutions have been raised, fixed, stabilized and maintained at noncompetitive levels;

c. Price competition on loans or uses of money between lending institutions has been suppressed;

d. Plaintiffs have been denied the opportunity of obtaining loans or uses of money in a free and competitive market.

46. Plaintiffs and members of the class they represent had no knowledge of the combination and conspiracy in denying loan

and/or in using the "rate of 4" method to determine prime rate and FIBA setting of its prime rate on face of loan instruments alleged herein, or any facts which may have led to the discovery thereof until on or about the date of Judgment Notwithstanding Verdict decision in Oregon cases appeared in late 1984. Plaintiffs and members of the class could not have discovered the conspiracy at an earlier date by the exercise of due diligence because of deceptive practices and techniques of secrecy employed by defendants and unnamed coconspirators to avoid detection and fraudulently conceal such combination and conspiracy such as "Rule of 4" method of determining prime rate. Plaintiffs detrimentally relied on prime rate of FIBO being a competitive noncollusive rate, directly tied to cost of funds, and prime rate as defined on the

note as the rate charged most credit worthy borrowers of FIBO.

37. By reason of defendants' conspiracy herein-above alleged, plaintiffs paid interest on First Interstate obligations at a rate higher than the rate which plaintiffs would have had to pay under natural conditions of competition in the absence of such conspiracy. Plaintiff and members of the class have thereby suffered substantial injury and damage. Plaintiffs are unable to totally ascertain their damage with precision at this time other than as outlined above. Such determination will require discovry and analysis of defendants' books and records.

SECOND CLAIM FOR RELIEF

38. That Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 thru 37 as if the same had been set forth herein in full.

39. That Defendants' conduct is

violative of, and actionable under A.S. 45.45.010 et. seq.(if applicable), A.S. 45.50.471 et seq.; A.S. 45.50.562 et seq; AS.45.50.576; AS 06.05.145 of Title 6 of Alaska Statutes and the regulations promulgated thereunder. Plaintiffs are entitled to treble damages pursuant to AS 45.50.531.

THIRD CLAIM FOR RELIEF

40. That Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 thru 39 as if the same had been set forth herein in full.

41. That Defendants' conduct amounted to a gross, material and egregious breach of contract; and that justice requires the Court to intervene between the parties so as to provide injuctive and declaratory relief to protect the named Plaintiffs.

42. That as a direct and proximate result of said breach of contract, the

named, and class, Plaintiffs have suffered damages as aforesaid; and justice requires Court intervention in order to make the named, and class, Plaintiffs whole.

FOURTH CLAIM FOR RELIEF

43. That Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 thru 42 as if the same had been set forth herein in full.

44. That Defendants' conduct is violative of, and actionable as a fraudulent misrepresentation upon which individual and class Plaintiffs' had reasonably relied to their detriment.

FIFTH CLAIM FOR RELIEF

45. That Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 thru 44 as if the same had been set forth herein in full.

46. That Defendants' conduct is violative of, and actionable as a conspiracy on the part of Defendants upon

which individual and class Plaintiffs had suffered damages as aforesaid.

SIXTH CLAIM FOR RELIEF

47. That Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 thru 46 as if the same had been set forth herein in full.

48. That Defendants' conduct is violative of, and actionable to the extent that any one or more of the Defendants had tortiously interfered with the contract rights of class and/or individual Plaintiffs.

SEVENTH CLAIM FOR RELIEF

49. That Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 thru 48 as if the same had been set forth herein in full.

50. That Defendants' conduct is violative of, and actionable to the extent that any one or more of the Defendants had

defamed any one or more of the Plaintiffs; and/or Defendants had unlawfully disparaged any one or more of the Plaintiffs in the operation and conduct of those Plaintiffs' businesses and/or otherwise subjected Plaintiffs to injurious falsehood.

EIGHTH CLAIM FOR RELIEF

51. That Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 thru 50 as if the same had been set forth herein in full.

52. At all times material, FIBO has publicly anounced a lending rate, which it holds out to be its "prime rate."

53. At all times material, FIBO & FIBA has pursued a policy of making announcements from time to time to the press, its borrowers, and members of the public at large that it had altered or was going to alter its "prime rate." In such public announcements, frequently timed to

follow similar announcements by other major banks, FIBO & FIBA announced a specific rate which it held out to be its then-existing "prime rate."

54. For many years past, the exact date being presently unknown to Plaintiffs, but, at all times material and continuing up to and including the date of filing of this complaint, defendants conceived of a plan and scheme to defraud Plaintiffs .

55. In furtherance of defendants' plan and scheme to defraud Plaintiffs , FIBO, FIBC, FIBA fraudulently and intentionally led Plaintiffs to believe and to rely upon representations that the "prime rate" was the most favorable lending rate offered by FIBO to its most credit worthy borrowers. (exhibit 2 page 1)

56. At all times material, Plaintiffs did believe and rely upon Defendants' representations that the "prime rate"

announced by FIBO and FIBA was in fact the lowest rate available to FIBO's most credit worthy borrowers.

57. At all times material, FIBA charged interest on plaintiffs' Deed of Trust Notes at 3.5 percent in excess of the rate publicly announced as FIBO "prime rate."

58. At all times material up until the time of default on principal note balance in fall 1983, Plaintiffs made payments on such promissory notes, the interest on which was calculated at 3.5 percent in excess of the rate collectively stated by FIBO & FIBA to be the "prime rate."

59. At all times material, the rate which was publicly announced by FIBO & FIBA as the "prime rate' was not in fact the lowest rate which FIBO charged its most credit worthy borrowers.

60. At all times material, in furtherance of Defendants' plan and scheme to defraud, loan statements and other

information incorporating the fraudulent "prime rate" were disseminated to Plaintiffs by Defendants on a monthly basis.

61. At all times material, Defendants periodically and continuously made use of the United States Mails and interstate telephone wire services in interstate commerce in furtherance of its plan and scheme to defraud Plaintiffs. (Exhibits 4 and 5 hereto)

62. Defendants' exaction of interest based upon a fraudulent prime rate constitutes a "racketeering activity" within the meaning of 18 U.S.C. Par. 1961(1) and within 18 U.S.C. Par. 1961(5) relating to a pattern of racketeering activity.

63. That Defendants FIBA, FIBO, FIBC each constitute a "person" as defined in 18 U.S.C.Section 1961(3) and an

"enterprise"as defined in 18 U.S.C. Section 1961 (4).

64. FIBA,FIBO,and/or FIBC have benefited both directly and indirectly by the pattern of racketeering activity through investment of the proceeds of the racketeering activity in their operations which effect interstate commerce in violation of 18 U.S.C. Section 1962(a).

65. That defendants FIBA, FIBO, and FIBC have used the proceeds of said racketeering activities to acquire, maintain and/or control their interest(s) in the enterprise(s) which are engaged in and whose activites effect interstate commerce in violation of 18 U.S.C. Section 1962(b). That specifically FIBC used proceeds from its pattern of racketeering activity to acquire and/or control First National Bank of Oregon and FIBA used the proceeds of the racketeering activity to establish itself as a franchisor of FIBC.

66. That the collusion between FIBO, FIBA and/or FIBC in furtherance of the continuing pattern and scheme to defraud Plaintiffs in violation of 18 U.S.C. Section 1962(a) and (b) constitutes a violation of 18 U.S.C. Section 1962 (d).

67. That Defendant FIBA used United States Mail and/or caused use of United States Mails in furtherance of Defendants FIBA, FIBO and FIBC scheme to defraud Plaintiffs by mailing a loan and interest statement to Plaintiffs each and every month after closing the loans based on the FIBO prime rate, said statements listed the interest rate charged for the preceeding month, said rate being the sum of the fraudulent "prime" rate and the 3.5% or other upcharge as called for in the Deed of Trust Note and/or other loan instruments. Said use of the United States Mail was for the specific intent to

deceive and/or defraud Plaintiffs as to the true "prime" rate. Said use of the U.S. Mail was part of a continuing plan and scheme to defraud Plaintiffs and was in violation of 18 U.S.C. Par. 1341 and 18 U.S.C. Sections 1962 (a), (b), and/or (d).

68. That on at least two occasions in 1982 and/or January 14, 1983 Plaintiff Michael E. Plunkett caused Lane + Knorr + Plunkett employee to use interstate telephone lines to telephone FIBO to ascertain the "prime" rate advertised by FIBO during each month of the period of the loans. (Exhibit 4 hereto). FIBO employee, in furtherance of the scheme to defraud Plaintiffs, verified the "prime" rate as the numerical difference between the rate charged for the preceeding month and the 3.5% upcharge per Deed of trust Note. On information and belief, defendants FIBO, FIBA, and FIBC further caused use of interstate wires and

telephones with the specific intent to further the scheme to defraud Plaintiffs. Defendants' use of the interstate wires and/or interstate telephones was part of their continuing plan and scheme to defraud Plaintiffs and was in violation of 18 U.S.C. Section 1343 and 18 U.S.C. Sections 1962 (a), (b), and/or (d).

69. That Defendant FIBA caused and/or is responsible under doctrine of respondent superior for FIBA employee Kauffman's defamatory and disparaging statement of paragraph 32 of above. Said Defendent FIBA acts are violative of 18 U.S.C. 1951 and/or Section 1952(b), A.S.11.41.530 (a) (3) (Extortion) and is actionable as a continuing pattern if extortion to defraud Plaintiffs of their property and constitutes racketeering activity pursuant to 18 U.S.C. Section 1961(1)(B) and 18 U.S.C. Section 1962(a)(b) and/or (d).

70. If and to the extent statement by Bill Burk of Rogers & Babler to Ben Garland, employee of plaintiff, on or about 17 May 1982 is true that Defendant banker (FIBA) stated Lane + Knorr + Plunkett was about bankrupt or words to that effect, said defamatory and untrue statements also constitutes a pattern of attempted extortion. Said attempted extortion is part of a continuing pattern of racketeering activity to defraud Plaintiff of their property per 18 U.S.C. Section 1961(1) and are actionable pursuant to 18 U.S.C. 1962(a)(b) and/or(d).

71. If and to the extent FIBA caused and/or provided information to other unnamed coconspirators banks to effectuate denial of .loans to Plaintiffs for the purpose of guaranteeing property through foreclosure said acts are a violation of AS11.41.520(a)(3),(5) and/or (7) and are actionable as a continuing pattern of

racketeering activity per 18 U.S.C. section 1951 and/or 1952(b) and is actionable as a racketeering activity pursuant to 18 U.S.C. 1961(a)(b) and 18 U.S.C. 1962(a)(b) and/or (d).

72. If and to the extent FIBA directive to illegally notarize after the fact a Uniform Commercial Code filing in conjunction with one or more loans to Plaintiffs constitutes a racketeering activity per 18 U.S.C.1961 said is actionable as a pattern of continuing racketeering activity to defraud Plaintiffs of their property per 18 U.S.C. 1962(a)(b) and/or (d).

73. Plaintiffs had no knowledge of the unlawful plan and scheme alleged herein, or any facts which may have led to the discovery thereof until on or about the date of newspaper report of Jury trial in May 1984. Plaintiffs could not have

discovered the unlawful plan and scheme at an earlier date by the exercise of due diligence because of deceptive practices and techniques of secrecy employed by Defendants to avoid detection and fraudulently conceal such unlawful plan scheme.

74. As a direct and proximate result of the Defendants' unlawful conduct, Plaintiffs have sustained substantial damages in an amount as yet unascertained. Such determination will require discovery and analysis of Defendants' books and records.

NINTH CLAIM FOR RELIEF

75. That Plaintiffs incorporate by reference each and every fact, statement and allegation in Paragraphs 1-74 as if the same had been set forth fully herein.

76. That Defendants' conduct is violative of, and actionable as interference with prospective business

opportunites of Plaintiffs, conspiracy to interfere with Plaintiffs' prospective business opportunites, breach of Defendants' implied covenant of good faith and fair dealing and/or breach of Defendants' fiduciary duty to Plaintiffs.

TENTH CLAIM FOR RELIEF

77. That Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 thru 76 as if the same had been set forth herein in full.

78. That one or more Defendents conduct is violative of and actionable as intentional infliction of economic hardship upon Plaintiffs, intentional infliction of emotional distress upon Plaintiff Michael E. Plunkett, conspiracy to intentionally inflict economic hardship upon Plaintiffs, and/or conspiracy to intentionally inflict emotional distress upon Plaintiff.

ELEVENTH AND OTHER CLAIMS FOR RELIEF

89. That Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 thru 88 as if the same had been set forth herein in full.

90. That in addition to the above-described claims for relief, Defendants' conduct amounts to prima facie torts of various descriptions, including without limitation gross negligence, recklessness, conspiracy, wrongful foreclosure, usury, tortious breach of contract and others. To the extent that Plaintiffs' Complaint requires further amendment to plead these claims with greater specificity, Plaintiff's pray for such relief to amend.

WHEREFORE Plaintiffs pray for judgment and for relief as follows:

I. For speedy permanent and temporary injunctive relief preventing thejudicial foreclosure sale of the above-described

real properties and

II. Alternatively, if the Court does not enjoin the pending foreclosure of said threatened properties, for damages (enhanced to the extent permitted by law) for Plaintiffs' losses of equity and other damages shown in addition to all other damages requested herein; and

III. For such other speedy permanent and temporary injunctive and declaratory relief as shall be necessary and advisable to protect interests of the Plaintiffs from suffering existing, ongoing or future irreparable harm, and to fully set forth the rights of the parties; and

IV. For the individual Plaintiffs to be awarded against Defendants, jointly and severally, as applicable, general, special, compensatory, statutory, consequential, punitive, treble, and other damages of any kind or type in an amount

in excess of ONE MILLION DOLLARS ($1,000,000.00) as shall be determined at trial; and

V. For interest to be awarded both before and after judgment; and

VI. For the Court to recognize the public interest impact of any decision in the above-entitled action; and for the Court to award Plaintiff his costs of suit and reasonable and actual attorneys' fees at the prevailing rate in the community under 42 U.S.C 1988 or otherwise as applicable together with interest thereupon until paid; alternatively for costs and reasonable attorneys' fees and interest as a substantive right under the Alaska Civil rule 82 and A.S. 09.60.010 or otherwise under state or federal law; and

VII. For such further and other relief as the Court may deem just and equitable under the circumstances.

RESPECTFULLY SUBMITTED this 15 day of

December, 1987.

Michael E. Plunkett, pro se
600 Barrow Street, Suite 200
Anchorage, Alaska, 99501
(907) 276-4939, 277-5481

CERTIFICATE OF SERVICE

I, Michael E. Plunkett, hereby certify that on this day I caused to be served by hand delivery copy of the above to John Hedland at his address of record and L.S. Kurtz at his address of record.

Dated at Anchorage, Alaska this 15th day of December, 1987.

Michael E. Plunkett, pro se

Michael E. Plunkett, Pro Se
600 Barrow, Suite 200
Anchorage, Alaska 99501

(907)276-4939

BEFORE THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Michael E. Plunkett; Lane+Knorr+ Plunkett, Architects and Planners Lane+Knorr+Plunkett Investment Company, also known as LKP Investment Company; Michael Plunkett, Inc.;and all others similary situated,	)
Plaintiffs.	)
v.	)
First Interstate Bank of Alaska, formerly, Alaska Bank of Commerce, First Interstate Bancorporation; First Interstate Bank of Oregon, formerly First National Bank of Oregon; Lawyers Title Co., Inc.;Anchorage School District; and unknown Defendants Does 1 through 35,	)
Defendants.	)

PROPOSED FIRST AMENDED AND/OR SUPPLEMENTAL COMPLAINT (COMPLAINT TO BE RESUBMITTED IN ITS ENTIRETY IF LEAVE TO AMEND IS GRANTED)

JURY TRIAL DEMANDED

No. A84-387 Civil

NINTH CLAIM FOR RELIEF

44. That plaintiff, Michael E. Plunkett, incorporates by reference each and every staement fact, allegation and complaint

set forth in paragraphs 1 through 43 if the same had been set forth herein in full.

45. That although the jury's verdict described in Paragraph 10 was vacated in favor of defendants as a result of the granting of a Motion notwithstanding the verdict, the plaintiffs in the above referenced Oregon cases have appealed, briefs have been filed and the appeal is yet to be set for oral argument. In the motion granting the judgment notwithstanding the verdict the opinion acknowledged that loans had been made below the prime rate. A copy of that opinion is included as Exhibit 4 hereto.

46. The loan agreement outlined in Paragraph 9, hereto contained the definition of the prime rate, Exhibit 2, Page 1, to Complaint as the rate charged to its most credit worthy borrowers. As loans were discounted below this rate,

said rate was fraudulently misrepresented by defendants First Interstate of Alaska, Inc. (formerly Alaska Bank of Commerce), and First Interstate Bank of Oregon (formerly First National Bank of Oregon).

47. As a result of the default and trustee sale held on September 12, 1984 (Exhibit 3 to original complaint) plaintiffs and therefore Michael E. Plunkett suffered an equity loss of about $74,000. On information and belief, defendants, First Interstate of Alaska failed to notify tenant of real property described as Parcel 2, in Paragraph 13, of the complaint as required by AS 34.20.070 (c) (3) and further upon information and belief failed to notify persons, specifically the State of Alaska, Department of Labor, and the Internal Revenue Service of the notice of default as required by AS 34.20.070 (c)(4). Copies of said liens are attached as

Exhibit 5. Defendants further failed to mail a copy of the revised notice of default deleting parcel No. 3 from the original notice of default. A copy of this original notice which was mailed in violation of AS 34.20.070 (c) (1). is included as Exhibit 6.

48. As a direct and proximate cause of the interest overcharge and other unlawful activity described in the First through Eighth Claims for Relief of the illegal sale of the property described in Paragraph 13 as described in Paragraph 47 above, plaintiffs and therefore plaintiff, Michael E. Plunkett have suffered direct and compensable damages in the amount of the equity loss of approximatedly $74,000 pluss general special, statuatory and other damages as shall be determined at trial.

TENTH CLAIM FOR RELIEF

49. That plaintiff, Michael E. Plunkett,

incorporates by reference each and every allegation statement and fact, set forth in paragraphs 1 through 49 as if the same had been set forth herein in full.

50. As a direct and proximate result of the damages incurred by the interest overcharges, default and sale outlined in Paragraph 47, plaintiff, Michael E. Plunkett was forced to subdivide and sell property in Homer, Alaska which he had planned to hold and develop as townhouse condominiums in the future. Said property sales proceeds went to pay debts owed by Lane + Knorr + Plunkett Architects caused by LKP Investments having insufficient cash flow to operate as a result of the interest overcharge and default and sale. Lane + Knorr + Plunkett Architects was forced to utilize its cash to pay rent in lieu of receiving rent credits against the loans it had made to LKP Investments.

51. As a futher proximate result of said

cash position Michael Plunkett was unable to utilize lot sale proceeds to make two final payments on the Homer property thus causing a default and sale on that property. Said default was the direct and proximate result of the interest overcharge and default and illegal sale outlined in Paragraph 47.

52. As a proximate result of said default in Homer, Michael E. Plunkett suffered direct and compensable losses of approximately $115,000 in equity and other compensatory, consequential general and other costs and damages in an exact amount to be proven at trial .

ELEVENTH CLAIM FOR RELIEF

53. That plaintiff, Michael E. Plunkett, incorporates by reference each and every allegation statement and fact, set forth in paragraphs 1 through 52 as if the same had been set forth herein in full.

54. That defendant Lawyer's Title

Company, Inc. is an Alaskan Corporation which has placed the below described real property on the market for a trustee's sale under a Deed of Trust Notice of Default and sale on behalf of the beneficiary, defendant, First Interstate Bank of Alaska pursuant to AS 34.20.070, 34.20.080, and 34.20.100.

55. As a direct and proximate result of the interest and overcharges and defaults outlined above, LKP Investments was unable to maintain sufficient cash flow to meet its mortgage payment obligations. As a result, a notice of default with trustee sale is scheduled for 15 October 1985 at 11:45 A.M. on the following real property parcels:

PARCEL I:

COMMERCIAL UNIT NO. 1, 600 BARROW a condominium as shown on the floor plans filed in the office of the Anchorage Recorder for the Anchorage Recording District, Third Judicial District, State of Alaska, on February 10, 1982 as Plat No. 82-20, as identified in the

Declaration recorded February 10, 1982, in book 697 at page 942, in the records of the Anchorage Recording District, Third Judicial District, State of Alaska.

TOGETHER WITH and undivided 3.718% interest in the common areas being Lot 1, Block 110, ORIGINAL TOWNSITE OF ANCHORAGE, records of the Anchorage Recording District, Third Judicial District, State of Alaska.

TOGETHER WITH the exclusive right to use those certain limited common areas and facilities as set forth in said Declaration.

PARCEL II:

COMMERCIAL UNIT No. 2, 600 BARROW a condominium as shown on the floor plans filed in the office of the Anchorage Recorder for the Anchorage Recording District, Third Judicial District, State of Alaska, on February 10, 1982 as Plat No. 82-20, as identified in the Declaration recorded February 10, 1982, in book 697 at Page 942, in the records of the Anchorage Recording District, Third Judicial District, State of Alaska.

TOGETHER WITH and undivided 29.484% interest in the common areas being Lot 1, Block 110, ORIGINAL TOWNSITE OF ANCHORAGE records of the Anchorage Recording District, Third Judicial District, State of Alaska.

TOGETHER WITH the exclusive right to use those certain limited common areas and facilities as set forth in said Declaration.

PARCEL III:

COMMERCIAL UNIT No. 3, 600 BARROW a condominium as shown on the floor plans filed in the office of the Anchorage Recorder for the Anchorage Recording District, Third Judicial District, State of Alaska, on February 10, 1982 as Plat No. , 82-20, as identified in the Declaration recorded February 10, 1982, in book 697 at Page 942, in the records of the Anchorage Recording District, Third Judicial District, State of Alaska.

TOGETHER WITH and undivided 25.117% interest in the common areas being Lot 1, Block 110, ORIGINAL TOWNSITE OF ANCHORAGE records of the Anchorage Recording District, Third Judicial District, State of Alaska.

TOGETHER WITH the exclusive right to use those certain limited common areas and facilities as set forth in said Declaration.

PARCEL IV:
Lot Three, Block One Hundred Eleven, ANCHORAGE TOWNSITE, records of the Anchorage Recording District, Third Judicial District, State of Alaska.
parcels:

These parcels are the commercial office condominium units which were developed as a part of the interim loan agreement outlined in pagagraph 9. A copy of the Deed of Trust securing these properties and a copy of Notice of Default are

included as Exhibit G and Exhibit E to Affidavit of Michael E. Plunkett in support of preliminary injunction and/or temporary restraining order.

56. Said Notice of Default and sale has violated AS 34.20.070 (c)(3) and (4) in that tenants and all lien holders have not been notified or as a direct and proximate cause of this illegal conduct and the aforementioned illegal conduct. Plaintiff stands to lose all his assets and equity arising from interest overcharge illegal foreclosure outlined in Paragraph 9, foreclosure of subsequent property in Homer, Alaska, and the instant foreclosure scheduled for October 15, 1985 at 11:45 A.M.

57. That Defendant, First Interstate Bank of Alaska, formerly, Alaska Bank of Commerce, by and through the trustee Defendant, Lawyer's Title Insurance Co., Inc., has declared and published its

intention to default and sell the above-described real property on 15 October, 1985 at a sale in Anchorage, Alaska; and that Plaintiffs stand to suffer irreparable harm and to lose unique and valuable interests in the real property unless the Court intervenes to provide relief, there being no adequate or complete remedy available at law. At the time of the notice of default under the notes and deeds of trust, Plaintiffs had allegedly been in arrears to the Defendant, First Interstate Bank of Alaska for a sum of about $100,000.00 less than the unlawful overcharges and subsequent damages accruing to defendants as aforesaid.

58. That as a result of the illegal conduct on the part of the defendants, plaintiffs, Michael E. Plunkett had bee forced to incur additional indebtnesses; and that additional direct and

consequential damages have been incurred thereby.

59. That upon information and belief, defendant Anchorage School District and all or some of the defendants, banks, have unlawfully colluded and/or conspired at various times to intentionally inflict economic hardships upon plaintiffs to hereby put him out of business by depriving plaintiff of additional loans which would have relieved to some extent the distress in which defendants had placed plaintiffs.

60. That plaintiff had not been aware, and could not reasonably have become aware, of the unlawful activities of the defendants, Anchorage School District, until review of the Treasurer's Report took place in mid 1984.

61. That as a direct and proximate result of the aforesaid acts and omissions on the part of the Defendants, and all of them,

plaintiff, Michael E. Plunkett, has suffered and will continue to suffer ongoing irreparable harm for which there is no complete and adequate remedy at law. In particular, plaintiff stands to lose valuable interests in the above-described real property; loss of reputation. disparagement of business reputation and relationships; have become involved in other foreseeable state litigation; and such other irreparable harm as shall be evidenced to the Court.

62. That as a direct and proximate result of the aforesaid acts and omissions on the part of the defendants, said defendants are jointly and severally liable to plaintiffs in an amount in excess of $1 million ($1,000,000.00) the exact amount of which is to be determined at trial. Said damages consist, without limitation, of (a) direct damages arising from usurious and/or overcharged sums for

interest. (b) direct and compensatory damages for breach of contract and fraudulent misrepresentation; (c) consequential damages for plaintiffs' foreseeable inabilities to meet their ongoing obligations as a result of the unlawful and unfair conduct on the Defendants part; (d) punitive and exemplary damages; (e) actual legal fees, expenses and any damages incurred in other lawsuits forced upon plaintiffs as a result of defendants' conduct; (f) general compensatory damages for tortious conduct; (g) damages for harm to individual and business reputation and disparagement; (h) special damages for costs incurred by plaintiffs to accountants, investigators, experts and other contractors; and (k) such other general, special, compensatory, statutory, consequential and other damages of any kind or type as shall be determined at trial.

63. That Defendants' conduct had been, and continues to be, so extreme, outrageous, willful and in bad faith that punitive and exemplary damages should be awarded in an amount to be determined at trial.

WHEREFORE, plaintiffs pray for judgement and for relief as follows:

I. For speedy permanent and temporary injuctive relief preventing the foreclosure sale of the above-described real properties; and

II. Alternatively, if the Court does not enjoin the foreclosure sale of said real properties, for damages (enhanced to the extent permitted by law) for Plaintiffs' losses of equity and other damages shown in addition to all other damages requested herein; and

III. For such other speedy permanent and temporary injunctive and declaratory relief as shall be necessary and advisable

to protect interest of the Plaintiffs from suffering existing, ongoing or future irreparable harm, and to fully set forth the rights of existing, ongoing or future irreparable harm, and to fully set forth the rights of the parties; and

IV. For the individual, Plaintiffs to be awarded against Defendants, jointly and severally as applicable, general, special, compensatory, statutory, consequential, punitive, treble, and other damages of any kind or type in an amount in excess of ONE MILLION DOLLARS ($1,000,000.00) as shall be determined at trial; and

V. For interest to be awarded both before and after judgment; and

VI. For such further and other relief as the Court may deem just and equitable under the circumstances.

RESPECTFULLY SUBMITTED this 11th day of October, 1985.

SUPPLEMENTAL ADDENDUM TO APPELLANT BRIEF AND REPLY BRIEF
CITATION TO SUPPLEMENTAL AUTHORITIES TO APPELLANT BRIEF AND REPLY BRIEF
ERRATA TO APPELLANT BRIEF
ERRATA TO REPLY BRIEF

CONTENTS

Pursuant to Rule allowing Statutes, Rules etc. to be submitted by separate pamphlet, the following Statutes and Rules are included as copied from the Alaska Statutes and Local Rules of the District Court for Alaska. Federal Rule Appellate Procedure 28(f).

GENERAL, ADMIRALTY, CRIMINAL, MAGISTRATE AND BANKRUPTCY RULES OF THE UNITED DISTRICT COURT FOR THE DISTRICT OF ALASKA

GENERAL RULES
RULE 5, MOTIONS AND OTHER MATTERS

(A) Motions, etc., to be Served on Opposing Party.
(B) Requirements for Submission.

(C) Oral Argument.

(D) Motions Submitted.

(E) Discovery Motions.

(F) Motions for Summary Judgment.

(G) Motion for Shortened Time.

(H) Frivolous and Unnecessary Motions; Penalty.
(I) Interlocutory Applications; Evidence.

(J) Motion for Rehearing or Recosideration

ALASKA STATUTES

Sec. 06.05.280. Bank fees and charges connected with mortgage loans

Sec. 11.31.100. Attempt.

Sec. 11.31.110. Solicitation.

Sec. 11.41.530. Coercion.

Sec. 11.41.520. Extortion.

Sec. 12.55.125. Sentences of imprisonment for felonies.

Sec. 45.45.010. Legal rate of interest

Article 3. Unfair Trade Practices and Consumer Protection

Sec. 45.50.471. Unlawful acts and practices.

Sec. 45.50.481. Exemptions.

Sec. 45.50.531. Private and class actions.

Sec. 45.50.542. Waiver.

Sec. 45.50.545. Interpretation.

Sec. 45.50.551. Penalties.

Sec. 45.50.561. Definitions

Article 4. Monopolies; Restraint of Trade.

Sec. 45.50.562. Combinations in restraint of trade unlawful.

Sec. 45.50.564. Monopolies and attempted monopolies unlawful

Sec. 45.50.566. Transactions and agreements not to use or deal in commodities or services unlawful.

Sec. 45.50.570. Interlocking directorates and relationships.

Sec. 45.50.572. Exemptions.

Sec. 45.50.574. Contracts voidable.

Sec. 45.50.576. Suits by persons injured.

Sec. 45.50.578. Certain violations constitute misdemeanor.

Sec. 45.50.580. Injunction by attorney general.

Sec. 45.50.582. Jurisdiction of court.

Sec. 45.50.584. Consent judgment.

Sec. 45.50.586. Judgment in favor of the state as evidence in action.

Sec. 45.50.588. Limitation of actions.

Sec. 45.50.590. Powers of attorney general.

Sec. 45.50.592. Documentary evidence.

Sec. 45.50.594. Testimony of witnesses.

Sec. 45.50.596. Definitions.

3) CITATIONS OF SUPPLEMENTAL AUTHORITIES TO APPELLANT BRIEF AND REPLY BRIEF

Pursuant to Federal Rule of Appellate Procedure 28 (j) the following additional authorities have been discovered and researched while preparing for oral argument. As oral argument was cancelled, the following citations are submitted. These citations are an attempt to clarify appellant Brief citations not fully cited, and/or to attempt to identify all opinions and cases by Federal and State Courts dealing with interest overcharges based on prime rates, particularly interest overcharges where the prime rate was floating and the prime rate was defined on the face of the note ans the rate charged the institutions most credit worthy borrowers.

American National Bank and Trust Company of Chicago v. Haroco, Inc. et al., 473 US 606, 87 L Ed 2d 437, 105 S Ct 3291. Prime rate case before Supreme Court, included because held mail fraud sufficient crime to raise RICO claim. Appellant Brief (hereafter "AB") at 24-26, Reply Brief (herafter "RB") at 6-9,20-22.

Beaver Falls Thrift Corp. v. Commercial Credit Bus. Cite as 563 F. Supp. 68 (1983). Miscalculation of interest rates. AB at 32, RB at 3-9,20-22.

Blacks' Law Dictionary, 5th Ed. p. 709 ("Inns of Court") St. Paul, West Publishing Co. 1979. Additional reference. AB at 17.

Catholic Lawyer, Vol 2. No.1, 1956. "Prayer for Lawyers" page 88. AB at 17, Included as additional reference. See also Vol. 1, no. 3, July 1955, "Votive Mass", pages 215-216.

Charing Cross, Inc. v. Riggs Nat'l Bank of D.C. No. 82-1116 (D.D.C. October 7, 1983). RICO prime rate case. AB at 24-26, RB at 6-9,20-22.

Chemical Bank v. Geller 727 F.2d 61 (2d Cir. 1984). Prime rate misrepresentation, interest based on floating prime, prime defined as most credit worthy, RICO and common law fraud claims, AB at 24-26, 29, RB at 6-9,20-25.

Coastal Steel Corp. Chemical Bank. Civil No. 82-1714 (D.N.J., October 198_)RICO prime rate case. AB at 24-26, RB at 6-9,20-22..

Derenco, Inc. v. Benj. Franklin Fed. Sav. & Loan Ass'n. , Or., 577 P.2d 477, Class action, interest charge. AB at 12, RB at 25.

George v. United Kentucky Bank, Civ.No. C-82-0021 (W.D.Ky. June 10, 1982).RICO prime rate case. AB at 24-26, RB at 6-9,20-22.)

Grant v. Union Bank,629 F.Supp. 570 (D.Utah 1986). Prime rate claims where prime rate not defined, RICO, fraud claims, AB at 24-26,29. RB at 6-9,20-22.

Haroco v. American National Bank & Trust Co., Cite as 577 Supp. 111 (1983)RICO prime rate case. AB at 24-26, RB at 6-9,20-22.).

Haroco v. American National Bank & Trust Co. of Chicago, Cite as 747 F.2d 384 (1984),RICO prime rate case. AB at 24-26, RB at 6-9,20-22..

Haroco v. American National Bank & Trust Co. of Chicago,Cite as 647 F.Supp. 1026 (N.D.Ill 1986)RICO prime rate case. AB at 24-26, RB at 6-9,20-22.).

Haroco v. American National Bank & Trust Co. of Chicago,Cite as 662 F.Supp. 590 (N.D.Ill. 1987)RICO prime rate case. AB at 24-26, RB at 6-9,20-22..

Haroco v. American National Bank & Trust Co. of Chicago,Cite as 121 F.R.D. 664 (N.D.Ill 1988)RICO prime rate case. AB at 24-26, RB at 6-9,20-22.).

Kleiner v. First National Bank of Atlanta, 526 F.Supp. 1019 (N.D.Ga 1981). RICO, Breach of Contract, misrepresentation, usuary, void for vagueness of prime rate case where prime rate defined on face of note as rate charged most credit worthy borrowers. Initial case denied RICO claims. AB 1-50, RB 1-25.

Kleiner v. First National Bank of Atlanta, George Morosani v. First National Bank of Atlanta, 97 F.R.D. 683 (1983)Class action certified, Prime rate case where prime rate defined regarding most credit worthy borrowers, RICO claims, breach of contract claims, pendant claims maintained even though Federal claims initially dismisses.

Kleiner v. First National Bank of Atlanta, George Morosani v. First National Bank of Atlanta, 581 F.Supp 955 (1984).M otion for summary judgment on pendant claims denied. AB at 1-50, reply Brief at 1-25 .

Mars Steel v. Continental Illinois National Bank and Trust Company of Chicago, 834 F.2d 677 (7th Cir. 1987). RICO, Breach of contract, fraud on prime rate cases, defined prime rate. Approval of Settlement. AB 1-50, RB 1-26.

Michaels Building Co. v. Ameritrust Co., 848 F.2d 674 (6th Cir. 1988). Held Antitrust and RICO, pendant claims should not be dismisssed. Prime rate case with some defendants defining prime rate as most credit worthy borrowers. Id at 676, n. 2. Cites Living Webster Encyclopedia of the English Language (1971) and Amercian Heritage Dictionary of the English Language (1981) prime rate definition as "minimum" and "lowest" rates of interest. AB 1-50, RB 1-26.

Mooney v. Fidelity Union Bank, Civ. Nos. 82-3192, 3193 (D.N.J. March 21, 1983). RICO prime rate case. AB at 24-26, RB at 6-9, 20-22..

Morosani v. First National Bank of Atlanta, 703 F.2d 1220 (11th Cir. 1983). Appeal overturns Kleiner case denial of RICO claims above. AB 1-50, RB 1-26.

Morosani v. First National Bank of Atlanta, 581 F.Supp. 945 (1984). Related to Kleiner above. AB 1-50, RB 1-26.

NCNB National Bank of North Carolina v. Tiller, 814 F.2d 931 (4th Cir. 1987). Appeal of loss at trial of claims for fraud, RICO, unfair trade practices, breach of contract. Prime rate undefined. Trial court affirmed. Appeal deemed frivolous. Appeal in forma pauporis denied. 484 U.S.974, 98 L.Ed 2d. 481, 108

S.C.483, Dec. 7, 1987.

National Society of Professional Engineers v. U.S., 435 U.S. 679, 55 L.Ed 2d 637, 98 S.Ct. 1355, (1978). Appeal of NSPE v. U.S., 555 F.2d 978 (10th Cir. 197_). Anti trust case where Court held that ethical canon requiring members not to compete based on price in rule of reason violation of 15 U.S.C. et seq. Court ruled said canon was not price fixing per se but was still anticompetitive. Court also at District Court level ruled out recommended fee schedules as used by engineers and Architects (original defendant who signed consent decree) as also price fixing. Appellant planned to argue the NSPE cases as controlling (if not directly, by parity of reasoning) in their application to the "rate fixing" prime rate setting by FIBC, FIBO, and FIBA. AB 1-50, RB 1-26, including the "count of four" and other lock step or overt prime rate fixing agreements.

Nordic Bank PLC v. Trend Group, Ltd., 619 F. Supp. 542, 558-562 (S.D.N.Y. 1985). Antitrust per se tying claim summary judgment of dismissal granted, RICO, Prime rate breach, intereference claims, breach of contract, prime rate defined as chareged to most credit worthy borrowers. Summary Judgment denied as to prime rate breach dismissal. AB 1-50, RB 1-26.

Pocahontas Supreme Coal Co. v. Bethlehem Steel, 828 F.2d 211, 214-217 (4th Cir. 1987), Federal case describing practice of "railroading" a decision, researched but misplaced for inclusion in Appellate Brief, page 45-46. Was to have been included in oral argument.

Shaw v. Oregon Bank, Civ. No. 82-126BE (Ore. May 17, 1982) .RICO prime rate case. AB at 24-26, RB at 6-9,20-22.).

Wilcox Development Company v. First Interstate Bank of Oregon, N.A., 97 F.R.D.440 (D.Ore 1983) RICO and Antitrust actions, initial denial of class action based on management reasons, preferring instead the test case and subsequent collateral estoppel. AB 1-50, RB 1-26._

Willcutts v. Jefferson Trust and Sav. Bank, Civ. No. 81-1153 (C.D. Ill. April 21, 198_).RICO prime rate case. AB at 24-26, RB at 6-9,20-22..

Burke, Civil RICO and Interest Rate Regulations, 39 Business Law Reporter, 1252, 1259-61 (1984),RICO prime rate cases. AB at 24-26, RB at 6-9,20-22..

41 Washington Financial Reporter, Dec. 19, 1983, at 933.RICO prime rate cases, settlement for large sums. AB at 24-26, RB at 6-9,20-22..

4) ERRATA TO APPELLANT BRIEF

As a result of rush to reduce page length to 50 pages, some syntactical and typographical errors resulted. The most garbled phraseology is corrected herein. This was to be discussed at oral argument.

Page 44, Paragraph 2, Sentence 2 should read as follows:

"Plaintiff could not have effectively rebriefed the Opposition to summary Judgment by FIBC and FIBO. . . . . (emphasis on added word.)

Page 44, Paragraph 2, sentence 4 should read as follows:

" As a result, Plaintiff was still not aware of the effects of Anderson, Celotex, Matsushida or California at the hearing and a prima facie case argument were therefore not made at all. . .

5) ERRATA TO REPLY BRIEF

In the haste to sufficiently edit Reply brief, page 25-26 are garbled. Change Sentence beginning on line one of page 26 to read as follows.

" To accomplish same meant a period of discounting below the prime rate to maintain a nationwide artificially high prime rate while making the transition to an advertised prime rate which was merely an average rate, while before it was the lowest rate."

Dated at Manhattan Beach California this 10th day of May, 1990.

/s/

Michael E. Plunkett, pro se.

12 USC 1441

(b) Resolution Trust Corporation established.

(10) Corporate Powers. The Corporation Shall have the following powers.

(F) To sue and be sued in its corporate capacity in any court of competent jurisdiction.

12 USC 1819 Incorporation powers seal

Fourth. To sue and be sued, complain and defend, in any court of law or equity, State or Federal.

(b) Agency authority.

(2) Federal court jurisdiction.

(A) In general. Except as provided in subparagraph (D), all suits of a civil nature at common law or in equity to which the Corporation, in any capacity, is a party shall be deemed to arise under the laws of the United States.

(B) Removal. Except as provided in subpaqragraph (D),the Corporation may, without bond or security, remove any action, suit, or proceeding from a State court to the appropriate United States district court.

27

(C) Appeal of remand. The Corporation may appeal any order of

remand entered by any United States district court.

(D) State actions. Except as provided in subparagraph (E), any action-

(i) to which the Corporation, in the Corporation's capacity as receiver of a State insured depository institution by the exclusive appointment by State authorities, is a party other than as a plaintiff.

(ii) which involves only the preclosing rights against the State insured depository institution, or obligations owing to, depositors, creditors, or stockholders by the State insured depository institution. and

(iii) in which only the interpretation of the law of such State is necessary, shall not be

deemed to arise under the laws of the United States.

(E) Rule of construction. Subparagraph (D) shall not be construed as limiting the right of the Corporation to invoke the jurisdiction of any United States district court in any action described in such subparagraph if the institution of which the Corporation has been appointed receiver could have invoked the jurisdiction of such court.

Appendix 7

28 USC 518

(a) Except when the Attorney General in a particular case directs otherwise, the Attorney General and the Solicitor General shall conduct and argue suits and appeals in the Supreme Court and suits in the United States Claims Court or in the United States Court of Appeals for the Fedreal Circuit and in the Court of International Trade in which the United States is interested.

(b) [Unchanged]

(As amended Oct. 10, 1980, P.L. 96-417, Title V, para. 503, 94 Stat. 1743, Apr. 2, 1982, P.L. 97-164, Title I, Part A, para. 117, 96 Stat. 32.)